

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned On Briefs October 1, 2013

STATE OF TENNESSEE v. DARRELL CARPENTER

Appeal from the Criminal Court for Shelby County
No. 07-08772 Paula Skahan, Judge

No. W2012-00947-CCA-DAC-CD - Filed October 17, 2013

Appellant, Darrell Carpenter, was indicted by the Shelby County Grand Jury for second degree murder in November of 2007. At the conclusion of a jury trial, he was convicted of the offense as charged in the indictment and sentenced to twenty years in incarceration as a violent offender. After the denial of a motion for new trial, Appellant did not seek an appeal. Appellant subsequently filed a petition for post-conviction relief in which he sought a delayed appeal pursuant to Tennessee Code Annotated section 40-30-113. The trial court granted the motion for delayed appeal. In this Court, Appellant challenges the sufficiency of the evidence resulting in his second degree murder conviction. After a review of the record and the applicable authorities, we conclude that the evidence at trial was sufficient to support the conviction. Accordingly, Appellant is not entitled to relief, and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and NORMA MCGEE OGLE, J., joined.

Joseph McClusky, Memphis, Tennessee, for the appellant Darrell Carpenter.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; Amy P. Weirich, District Attorney General, and Bryan Davis, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

At trial, David Young testified that the victim, Dedrick Campbell, knocked on the front door of his home located at 1040 Lewis in Memphis on July 10, 2007, in the late afternoon. The victim wanted to borrow Mr. Young's cell phone. Mr. Young complied, handing his phone to the victim. The victim took the phone to the front porch of the home. He was seen talking on the phone on the front porch of the home by both Mr. Young and Steven Moore.

Mr. Moore was walking down the street on the afternoon of July 10 around the same time the victim was on Mr. Young's front porch talking on Mr. Young's cell phone. He testified at trial that he witnessed Appellant and another man walk up to the victim at the home at 1040 Lewis. Mr. Moore was far enough away that he could not hear what the men discussed during a conversation that lasted approximately ten minutes. Mr. Young went onto the porch at some point during the conversation between the three men to see if the victim still had his cell phone. He observed Appellant talking to the victim. Mr. Young went back into the house and sat on the couch.

At the conclusion of the conversation, Mr. Moore observed Appellant turn as if to walk away, then turn back toward the victim and fire a shot. The shot hit the cell phone that the victim was holding in his hand. The victim walked toward appellant was shot twice in the chest. At that point, the victim turned to run toward the front door of the home. The victim was shot several times in the back. He died as a result of multiple gunshot wounds.

Mr. Young heard the gunshots from inside the home. He looked out the window and saw the victim running toward the house then saw the victim change directions and run. Mr. Young went to his bedroom to call 911. From this vantage point, he saw Appellant running down the street. Mr. Young stated that he did not see anything in Appellant's hands while he was running.

Mr. Young exited his home after he got off the phone with 911. The police were already on the scene. Mr. Young saw the victim lying on the sidewalk and his cell phone on the steps. The phone had a bullet hole through it.

The first officer on the scene, Richard Rouse of the Memphis Police Department, heard shots fired in the area of Lewis and Brown. He saw someone run across the street but he was, at that time, unaware of the situation. As he got closer to the scene, he saw the

victim lying partially on the curb and several men nearby. Officer Rouse asked these men to identify the perpetrator. He was told that the shooter was on the run. Officer Rouse ran in the direction of the shooter but was unable to locate a suspect.

At the conclusion of the jury trial, Appellant was convicted as charged in the indictment. The trial court sentenced Appellant to a twenty-year sentence as a violent offender, to be served at 100%. The judgment was entered on May 18, 2010.

Shortly after sentencing, trial counsel was allowed to withdraw from representation of Appellant. On September 14, 2010, Appellant, through new counsel, filed a motion for new trial. The trial court held a hearing on the motion for new trial on September 29, 2010. An order was entered that same day denying the motion for new trial. On the judgment form, in the special conditions section, the following notation appears: “Judgment Excused 9-29-10, MNT - overruled.”

Subsequently, on December 16, 2010, Petitioner filed a pro se “Post-conviction Relief Petition for Delayed Appeal Pursuant to T.C.A. § 40-30-113.” In the petition, Petitioner alleged that the State withheld exculpatory evidence at trial; that he received ineffective assistance of counsel because new counsel failed to file a notice of appeal; that he received ineffective assistance of counsel at trial by failing to make objections at trial and failing to present evidence at trial; and that his conviction was based on illegal evidence. On April 30, 2012, the trial court entered an order granting the delayed appeal. In the order, the trial court noted that after trial and conviction, Appellant hired an attorney to handle the motion for new trial and appeal. The trial court found that there was no notice of appeal filed after the denial of the motion for new trial and granted Petitioner a delayed appeal.

On appeal, Petitioner only challenges the sufficiency of the evidence.

Analysis

At the outset of our analysis, we must address the procedural posture preceding the appearance of this case in this Court. As noted above, the judgment was entered on May 18, 2010. According to the technical record, the motion for new trial was not filed until September 14, 2010. The trial court then “excused” the judgment and entered the judgment form nunc pro tunc September 29, 2010. The trial court filed an order denying the motion for new trial after a hearing.

We must address the fact that the untimely motion for new trial filed by counsel was a nullity. Tenn. R. Crim. P. 33(b). The trial court did not have the authority to “excuse” the judgment, effectively changing the date to accommodate an untimely motion for new trial.

Moreover, the trial court did not have the authority to consider the issues presented in the untimely motion, and the consideration of those issues by the trial court does not validate the motion. *State v. Martin*, 940 S.W.2d 567, 569 (Tenn. 1997).

Despite the procedural missteps, this delayed appeal is properly before the Court with respect to the issue of the sufficiency of the evidence. Appellant argues that because none of the witnesses saw a weapon in Appellant's hands and the "third man" did not run away after the shooting, the evidence was not sufficient to convict him of second degree murder. The State disagrees, noting that the jury was entrusted with the task of assessing the credibility of the witnesses at trial and determined that the evidence was sufficient to support a conviction.

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and "approved by the trial judge, accredits the testimony of the" State's witnesses and resolves all conflicts in the testimony in favor of the State. *State v. Cazes*, 875 S.W.2d 253, 259 (Tenn. 1994) (citing *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992)). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption "and replaces it with one of guilt." *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. *Id.* The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. *See* Tenn. R. App. P. 13(e); *Harris*, 839 S.W.2d at 75. In making this decision, we are to accord the State "the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom." *See Tuggle*, 639 S.W.2d at 914. As such, this Court is precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. *State v. Morgan*, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own "inferences for those drawn by the trier of fact from circumstantial evidence." *Matthews*, 805 S.W.2d at 779. Further, questions concerning the credibility of the witnesses and the weight and value to be given to evidence, as well as all factual issues raised by such evidence, are resolved by the trier of fact and not the appellate courts. *State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). "The standard of review 'is the same whether the conviction is based upon direct or circumstantial evidence.'" *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)).

The identity of the perpetrator is an essential element of any crime. *State v. Thompson*, 519 S.W.2d 789, 793 (Tenn. 1975). However, the identification of a defendant is a question of fact for the determination of the jury after consideration of the proof. *State*

v. Strickland, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993) (citing *State v. Crawford*, 635 S.W.2d 704, 705 (Tenn. Crim. App. 1982)).

A conviction for second degree murder requires proof that the defendant unlawfully and knowingly killed another. T.C.A. §§ 39-13-201,-210(a)(1).

Viewing the evidence in the light most favorable to the State, the proof established that the victim was standing on Mr. Young's porch. Both Mr. Young and Mr. Moore saw Appellant, the victim, and a third man having a conversation outside Mr. Young's home. Mr. Moore then saw Appellant shoot the victim. The jury obviously accredited the testimony of both Mr. Young and Mr. Moore herein to establish Appellant's identity as the perpetrator of the offense. Appellant is not entitled to relief.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE